



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 7, 2015

Mr. Bob Davis
Office of Agency Counsel
Legal Section MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2015-08893

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 563411 (TDI# 159143).

The Texas Department of Insurance (the "department") received a request for seven categories of information pertaining to a named individual and information pertaining to the evaluation of a specified Medical Quality Review Panel for a specified time period. You state the department does not have information responsive to portions of the request.¹ You state the department has released some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, the requestor argues the department failed to comply with section 552.301 of the Government Code. Pursuant to section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d). The requestor contends the department failed to comply with section 552.301(d) of the Government Code. The department raises section 552.101 of the Government Code for the submitted information. Section 552.101 can provide a compelling reason for non-disclosure under section 552.302 of the Government Code. Therefore, regardless of whether the department failed to comply with section 552.301, we will consider whether the department may withhold the submitted information under section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 402.092 of the Labor Code, which provides confidentiality and exceptions to confidentiality for the investigation files of the Division of Workers' Compensation of the Department of Insurance (the "division"). Section 402.092 provides, in relevant part:

(b) Information maintained in the investigation files of the division is confidential and may not be disclosed except:

- (1) in a criminal proceeding;
- (2) in a hearing conducted by the division;
- (3) on a judicial determination of good cause;
- (4) to a governmental agency, political subdivision, or regulatory body if the disclosure is necessary or proper for the enforcement of the laws of this or another state or of the United States; or
- (5) to an insurance carrier if the investigation file relates directly to a felony regarding workers' compensation or to a claim in which restitution is required to be paid to the insurance carrier.

(c) Division investigation files are not open records for purposes of [the Act].

(d) Information in an investigation file that is information in or derived from a claim file, or an employer injury report or occupational disease report, is governed by the confidentiality provisions relating to that information.

Labor Code § 402.092(b)–(d). For purposes of section 402.092, an investigation file is "any information compiled or maintained by the division with respect to a division investigation authorized under this subtitle or other workers' compensation law [but] does not include

information or material acquired by the division that is relevant to an investigation by the insurance fraud unit and subject to Section 701.151, Insurance Code.” *Id.* § 402.092(a).

You state the submitted information consists of information contained in an investigation file assembled by the division’s Office of the Medical Advisor and the Medical Quality Review Panel pursuant to those entities’ statutory duty to review applicants for the approved designated doctor list under sections 413.0511 and 413.0512 of the Labor Code, respectively. Further, we understand the information at issue is not subject to the release provisions in section 402.092, 413.0511, 413.0513, or 413.0514 of the Labor Code. Accordingly, we find the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code.

You also ask this office to issue a previous determination that would permit the department to withhold information collected, assembled, or maintained in a division investigative file under section 413.0511 or section 413.0512 of the Labor Code under section 552.101 of the Government Code in conjunction with sections 402.092 and 413.0513 of the Labor Code without the necessity of requesting a decision from our office under section 552.301 of the Government Code. We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Paige Thompson". The signature is fluid and cursive, with the first name "Paige" being more prominent and the last name "Thompson" following in a similar style.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 563411

Enc. Submitted documents

c: Requestor
(w/o enclosures)